

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STRIKE 3 HOLDINGS, LLC, a Delaware
corporation,

Plaintiff,

vs.

JOHN DOE subscriber assigned IP address
73.225.38.130,

Defendant.

Case No.: 2:17-cv-01731-TSZ

JOINT STATUS REPORT

Counsel for Plaintiff Strike 3 Holdings, LLC (“Plaintiff”) and counsel for Defendant John Doe subscriber assigned IP address 73.225.38.130 (“Defendant”) hereby submit this JOINT STATUS REPORT pursuant to the Honorable Judge Zilly’s Order (Docket # 58) in the above action. The parties incorporate by reference their previous Joint Status Report and adopt it in full unless any provisions of it are contradicted by this present Joint Status Report.

1. Proposed Date For Trial

Plaintiff: October 7, 2019.

Defendant: December 9, 2019

2. Proposed Deadlines for Completing Discovery and Filing Dispositive Motions

Plaintiff Discovery Cutoff: June 7, 2019.

Defendant Fact Discovery Cutoff: September 10, 2019

Defendant Expert Discovery Cutoff: October 8, 2019

1 Plaintiff: Dispositive Motion Deadline: July 12, 2019

2 Defendant's Comment: Defendant has not received any document production. In the
3 event that documents are not produced or there is extensive law and motion, these dates will
4 need to be adjusted. On the issue of infringement, Defendant will file a motion for judgment
5 on the pleadings.

6 Plaintiff's Comment: Since Defendant served his requests for production, this case has
7 fundamentally changed—certain claims and issues remain relevant while others have been
8 dismissed or are moot. Accordingly, many of Defendant's requests for production are irrelevant
9 and moot. Notwithstanding any objections, Plaintiff intends to substantively respond to
10 Defendant's requests for production that remain relevant and which it can produce, consistent
11 with the Federal Rules, in a timely manner.

12 **3. Date By Which The Parties Can Be Prepared To Engage in Mediation**

13 Plaintiff: April 8, 2019.

14 Defendant: January 4, 2019.

15 Defendant's Comment: Defendant requests a settlement conference before a magistrate
16 or District Court Judge with all parties present. An early settlement conference should facilitate
17 resolution.

18 Plaintiff's Comment: Plaintiff does not believe a settlement conference will be fruitful
19 until Defendant substantively responds to certain discovery requests that Plaintiff intends to
20 propound immediately. In the event Defendant fully responds to Plaintiff's discovery requests,
21 Plaintiff will consider an earlier date for a settlement conference.

22 **4. Declaration of Non-Infringement Regarding Non-Infringement Counterclaim**

23 Plaintiff:

24 Plaintiff has proposed to Defendant that Plaintiff will dismiss Defendant with prejudice
25 (the previously-filed dismissal was without prejudice) and will provide Defendant with a
26 covenant not to sue Defendant, in exchange for Defendant dismissing with prejudice his
27 counterclaims for declaration of non-infringement and abuse of process, and the parties will
28 request a briefing and hearing schedule be set by the Court for the parties to file their respective
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1 motions for attorneys' fees and costs. Defendant has indicated he will respond shortly to this
 2 proposal. In the event Defendant rejects Plaintiff's proposal, Plaintiff will move for either
 3 summary judgment or judgment on the pleadings on Defendant's abuse of process
 4 counterclaims.

5 Defendant:

6 Defendant will enter into a stipulation and order for entry of partial judgment of non-
 7 infringement under FRCP 54(b) with a request that briefing for a motion for attorney fees to be
 8 filed 45 days after entry of partial judgment. This will streamline the case down to a single claim
 9 of Abuse of Process under Washington Law. Absent a stipulation, Defendant will bring a motion
 10 for judgment on the pleadings on the issue of infringement. See *TouchPoint Commc'ns, LLC v.*
 11 *Dentalfone, LLC* 3:15-cv-05240-JRC (W.D. Wash., 2016), Order entered on February 10, 2016.

12 **5. Are There Any Issues Left In This Matter To Be Determined Other Than**
 13 **Attorneys' Fees and Costs**

14 Plaintiff:

15 As set forth above, if Plaintiff's proposal is accepted, there would be no remaining
 16 issues in this case other than determining whether either party is entitled to an award of
 17 attorneys' fees and costs. If not accepted, then the remaining issues would be Defendant's
 18 counterclaims and whether additional parties might be joined in this action, such as Defendant's
 19 son.

20 Defendant:

21 The Abuse of Process claim still exists. If there is this sole claim remaining, then
 22 Defendant expects a three day jury trial or two day bench trial.

23 **6. Should The Court Forego Entering A Schedule Order And Set Dates for Attorneys'**
 24 **Fees Motions.**

25 Plaintiff:

26 As set forth above, if Plaintiff's proposal is accepted by Defendant, then the Court
 27 should do exactly that—not enter a scheduling order and instead set a briefing schedule
 28 regarding attorneys' fees and costs.

Defendant:

Defendant has sent Plaintiff two settlement offers that have lapsed, therefore absent a stipulation from Plaintiff on the issue of infringement, a scheduling order should be set.

DATED this 21st day of November, 2018.

FOX ROTHSCHILD LLP

s/ Bryan J. Case
Bryan J. Case, WSBA #41781
Lincoln D. Bandlow, *admitted Pro Hac Vice*
(CSBA #170449)

Attorneys for Plaintiff

EDMONDSON IP LAW

s/ J. Curtis Edmondson
J. Curtis Edmondson, WSBA #43795

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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☒ Via CM/ECF
☐ Via U.S. Mail
☐ Via Messenger Delivery
☐ Via Overnight Courier
☐ Via Facsimile

DATED this 21st day of November, 2018.



Courtney R. Tracy